

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LIBERTARIAN PARTY OF ILLINOIS, et al.,)	
)	
Plaintiffs,)	No. 2022-cv-0578
v.)	
)	Honorable Robert W. Gettleman
KAREN YARBROUGH, in her capacity as the)	
COOK COUNTY CLERK, et al.,)	Magistrate Judge
)	Honorable Jeffrey Cole
Defendants.)	

**Amended Emergency Motion For Preliminary Injunction
and/or Temporary Restraining Order**

Plaintiffs are the Libertarian Party of Illinois (“LPI”), its candidates seeking ballot placement as members of the Cook County Board, and voters desiring to associate as a political party, nominate candidates of their choice, and be able to vote for their candidates at the June 28, 2022 primary election. Plaintiffs seek to preserve their First and Fourteenth Amendment rights in relation to the March 7 – 14, 2022 candidate filing period for the June 28, 2022 primary election as candidates of the LPI as an established political party.

Plaintiffs respectfully request that this Honorable Court enter a preliminary injunction and/or temporary restraining order pursuant to Federal Rules of Civil Procedure, Rule 65(a) and (b), enjoining Defendants from the wrongful and unconstitutional denial of Plaintiffs’ rights under the Illinois Election Code and the United States Constitution.

A. Summary of facts and issues from Plaintiffs’ Verified Complaint.

“Illinois classifies general-election candidates into three groups: those affiliated with an ‘established’ political party, those affiliated with a ‘new’ political party, and those running as independents. If a candidate is affiliated with a party, whether established or new, the party name appears alongside the candidate’s name on the ballot.” *Libertarian Party of Illinois v. Scholz*, 872

F.3d 518, 521 (7th Cir. 2017).

Editing non-pertinent words out of 10 ILCS 5/10-2 the procedure by which a new political party achieves established political party status is as follows:

A political party which, at the last election in any ...county...in the State, polled more than 5% of the entire vote cast within such [county] as the case may be, has voted as a unit for the election of officers [note “officers” is plural] to serve the respective¹ territorial area of such [county], is hereby declared to be an “established political party” within the meaning of this Article as to such [county].

For example, if a party’s candidate for governor received more than 5% of the vote at the last election, it is deemed established for each state Representative District, despite redistricting and changes to the territorial boundaries of each Representative District after redistricting. *Id.* Similarly, on a smaller county scale by operation of 10 ILCS 5/7-2 and 10 ILCS 5/7-4, if a party’s candidate for countywide office received more than 5% of the vote at the last election, it is deemed established for each Cook County Board district within the county, despite redistricting and changes to the territorial boundaries of each district within Cook County.

At the last general election on November 3, 2020, Cook County voters selected their Cook County State’s Attorney, and the Libertarian Party candidate earned more than 5% of the vote cast within Cook County. The district for which established party status is conferred is thus for the entirety of Cook County. 10 ILCS 5/7-2, 7-4.

The Libertarian Party has shown more than the needed modicum of support throughout Cook County – in each and every district. Established party status is attained countywide without regard to whether the voter base was spread evenly, or clustered and concentrated in a portion of the territorial areas – the established party status is earned for the entire county.

Defendant, Clerk Yarbrough, has selectively recognized the LPI as an established political

1 “Respective” is defined as “belonging or relating separately to each of two or more people or things.”

party within the territorial boundaries of Cook County, IL, but not for all offices eligible for ballot placement at the June 28, 2022 primary election. Specifically, Defendant, Clerk did not publish a procedure for the LPI candidates to attain ballot access for the positions of Cook County Board members, nor a procedure for LPI township committeepersons to gain ballot access. Signature requirements for these two positions were intentionally omitted by Clerk Yarbrough in her public disclosure of “General Information.”

Separately, Libertarian Party candidates are circulating petitions for countywide offices that will be nominated at the June 28, 2022 primary election, including Thea Tsatos and Ruben Pantoja who are competing candidates for the office of Cook County Board President, as well as Michael Murphy for Cook County Treasurer, Joseph Schreiner for Cook County Clerk, Nico Tsatsoulis for Cook County Assessor, and Brad Sandefur for Cook County Sheriff.

The Defendants have indicated that they will print and canvass ballots for a June 28, 2022 primary election for nomination of countywide Libertarian Party candidates, but it is anticipated that the Defendant, Clerk Karen Yarbrough and Defendant, Chicago Board of Election Commissioners, will deny ballot access to the Plaintiffs for nomination of members of the Cook County Board and for election of township committeepersons.

B. Standard for preliminary injunction.

To obtain a preliminary injunction, Plaintiffs must show the following: “(1) no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is denied and (2) some likelihood of success on the merits.” *Wisconsin Right to Life, Inc. v. Barland*, 751 F.3d 804, 830 (7th Cir. 2014) (citing *Ezell v. City of Chicago*, 651 F.3d 684, 694 (7th Cir. 2011)). “If this showing is made, ‘the court weighs the competing harms to the parties if an injunction is granted or denied and also considers the public interest.’” *Id.* (quoting *Korte v. Sebelius*, 735 F.3d 654, 665 (7th Cir. 2013)).

The “equitable balancing proceeds on a sliding-scale analysis; the greater the likelihood of success on the merits, the less heavily the balance of harms must tip in the moving party’s favor.” *Id.* Thus, in First Amendment cases, “the likelihood of success on the merits is usually the decisive factor.” *Wisconsin Right to Life, Inc.*, 751 F.3d at 830. The substantive standard for issuing a temporary restraining order is essentially the same. See *Merrill Lynch, Pierce, Fenner & Smith v. Salvano*, 999 F.2d 211, 214 (7th Cir. 1993); see also *Bryant v. Matvieshen*, 904 F.Supp.2d 1034, 1042 (E.D. Cal. 2012).

Plaintiffs have met the requirements for injunctive relief, as they have no adequate remedy at law for denial of their First Amendment right to associate as a political party, nominate their candidates, and vote for their candidates at a primary election. There is no cost or burden involved to the Defendants who are already preparing for a contested Libertarian Party primary election. The balancing of harms also ways heavily in favor of Plaintiffs, and based upon the express provisions of the Election Code, 10 ILCS 5/7-2 and 10 ILCS 5/7-4, they are likely to prevail upon the merits.

C. Injunctive relief requested.

Plaintiffs respectfully request that this Honorable Court enjoin the Defendant, Clerk Yarbrough, and the Chicago Board of Election Commissioners to the extent necessary for consistent enforcement throughout Cook County, for the duration of this litigation, to:

- (a) amend the Clerk’s “General Information” disclosure to identify the Libertarian Party as an established political party for all offices, including Cook County Board members, and committeepersons;
- (b) prominently notify the public at the Clerk’s website and at all of her physical office locations of the foregoing amendment to the “General Information” disclosure;
- (c) direct Defendants to place the names of Plaintiffs, James Humay, Jason Ross Decker,

and Brandon Sizelove upon the June 28, 2022 primary election ballot as candidates of the Libertarian Party for Cook County Board commissioners for Districts 1, 5, and 11, respectively,

(d) accept nomination papers from other candidates of the Libertarian Party for the offices of Cook County Board commissioner and township committeeperson for the June 28, 2022 primary election;

(e) commence all preparations for a Libertarian Party Primary election on June 28, 2022 to include Libertarian Party candidates for Cook County Board members and for Libertarian party committeepersons;

(f) thereafter, direct Defendants in accordance with the Illinois Election Code, to accept certifications to fill vacancies for the November 8, 2022 general election from the Libertarian Party seeking to fill vacancies in nomination from the primary election.

(g) and for all other relief this Court deems just.

Plaintiffs' attorney certifies that counsel for each Defendant has been contacted and provided copies of the Plaintiffs' Complaint, this Motion, and Plaintiffs' Proposed Order (attached as Exh. A). Plaintiffs are also serving each Defendant with summons and complaint on an expedited basis.

Wherefore, Plaintiffs, for the foregoing reasons respectfully request entry of a preliminary injunction directing Defendant, Clerk Yarbrough and to the extent necessary for implementation within the boundaries of the City of Chicago, Defendant, Chicago Board of Election Commissioners, as follows:

- (a) to amend Clerk Yarbrough's "General Information" disclosure to identify the Libertarian Party as an established political party for all offices, including Cook County Board members, and committeepersons;
- (b) to prominently notify the public at Clerk Yarbrough's website and at all physical

- office locations of the foregoing amendment to the “General Information” disclosure;
- (c) to direct Defendants to place the names of Plaintiffs, James Humay, Jason Ross Decker, and Brandon Sizelove upon the June 28, 2022 primary election ballot as candidates of the Libertarian Party for Cook County Board commissioners for Districts 1, 5, and 11, respectively,
 - (d) to accept nomination papers from candidates of the Libertarian Party for the offices of Cook County Board commissioner and township committeeperson for the June 28, 2022 primary election;
 - (e) to commence all preparations for a Libertarian Party Primary election on June 28, 2022 to include Libertarian Party candidates for Cook County Board and for its party committeepersons;
 - (f) to thereafter, in accordance with the Illinois Election Code, accept certifications to fill vacancies for the November 8, 2022 general election from the Libertarian Party seeking to fill vacancies in nomination from the primary election; and
 - (g) otherwise as just and appropriate and/or agreed to between the parties, to protect Plaintiffs’ First and Fourteenth Amendment rights.

Respectfully submitted:

By: /s/Andrew Finko
Attorney for Plaintiffs

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Certificate of Service

The undersigned an attorney, certifies under penalties of perjury that on February 7, 2022,
he served the foregoing Emergency Motion upon the following persons via email delivery

James Nally, Clerk's attorney
Colleen Gleason, Clerk's manager
Adam Lasker, CBEC attorney
Charles Holiday, CBEC Exec. Director

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/s/ Andrew Finko